DRED SCOTT CASE DRAWER 9A CIVIL WAR - PRELIMINARIES

Civil War Preliminaries

Dred Scott Case

Excerpts from newspapers and other sources

From the files of the

Lincoln Financial Foundation Collection

Echo of the Dred Scott Decision.

The writer of the following letter was the first United States Surveyor General for Washington Territory, serving from 1853 to 1860. During the Indian wars of 1855 and 1856 he also served as Adjutant General of the Washington Territory Volunteers. It is well known that Captain William Clark, of the Lewis and Clark expedition, brought his slave York to the northwest in 1805. There may have been other slaves here from time to time but this letter reveals the only other authentic record known to the present editor.

Olympia, Ter. Wash.
Sept. 30th, 1860.

Hon. H. M. McGill,
Acting Governor of W. T.

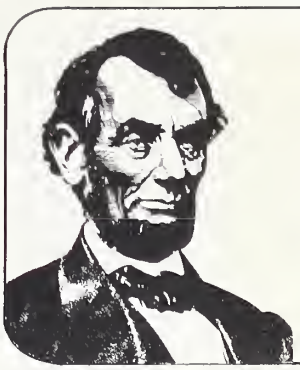
Sir:

As a citizen of the United States and of Washington Territory, I beg to call your attention to an act or acts of the British authorities of Victoria, Vancouver's Island, by which a slave Boy belonging to my relative R. R. Gibson, of Talbot County, Maryland, and for the last 5 years hired and employed by myself, by arrangement with the owner, was taken from the Mail Steamer, plying between this port and all the ports of Pugets Sound.

On the 24th of Sept. the slave secreted himself on board the Mail Steamer "Eliza Anderson" and on the 25th as the steamer touched at port of Victoria, was boarded by the civil authorities there and the slave forcibly taken therefrom.

I therefore respectfully request that you bring the case before our Government at Washington City, to the end that the owner or the slave may have justice and the flag of our country be vindicated and relieved from the assumption of right of search, thus made and enforced in this case.

I am Sir,
Very Respectfully,
JAMES TILTON.



Lincoln Lore

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DON E. FEHRENBACHER ON THE DRED SCOTT CASE: A REVIEW

The date and place of his birth are unknown. His real name may have been Sam, but history knows him by a very different and unforgettable name. Some described him as a shiftless troublemaker; others commended his character. He was a slave. He had several masters over the years, and his master for an important period of the slave's life was a hypochondriac and a ne'er-do-well who was syphilitic and may have died of syphilis, though genteel doctors rarely wrote such diagnoses on the death certificates of genteel slaveholders. When he sued for his freedom, the resulting legal battle made his name a household word; yet it is not at all clear who owned him at the time of the suit. The man whom the slave sued was too insane by the time of the trial to care about the result and died in a mental institution. His real owner may have been an antislavery politician from Massachusetts. The slave's lawyer would become a member of Abraham Lincoln's cabinet, but the lawyer's deepest desire was to send the slave "back" to Africa if he won the case. The slave lost his case for freedom and was almost immediately freed by his master.

The slave's name, of course, was Dred Scott. His syphilitic owner, Dr. John Emerson, carried Dred to Illinois (a free state) and to territory north of 36° 30′ latitude acquired in the Louisiana Purchase (and, therefore, free territory). The doctor later died, officially of consumption, in Davenport, Iowa Territory. His insane owner and the man he sued was named John F. A. Sanford, misspelled "Sandford" in the official report of the Supreme Court — a fitting symbol of the errors that have plagued the history of this complex case. The antislavery politician was Calvin Chaffee, who married the widowed Mrs. Emerson (*nee* Sanford), the sister of John F. A. Sanford. Scott's famous lawyer was Montgomery Blair, an ardent advocate of black colonization.

Professor Don E. Fehrenbacher of Stanford University has written what is sure to be the definitive book on the subject: *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978). Yet "definitive" is not a good enough word, for a definitive book can also be ponderous, poorly written, and doggedly comprehensive without a hint of brilliance or innovation. On the contrary, this book is so clearly written as to be a model for all constitutional history written hereafter. It is as lively a treatment as is possible of an extremely difficult subject. Its conclusions are both sane and balanced on the one hand, and brilliantly perceptive and original, on the other. It is an achievement to be envied by any historian.

From the Louis A. Warren Lincoln Library and Museum

FIGURE 1. Roger B. Taney (1777-1864) feared that the "South is doomed to sink to a state of inferiority, and the power of the North will be exercised to gratify their cupidity and their evil passions, without the slightest regard to the principles of the Constitution."

Moreover, *The Dred Scott Case* is more than the best book ever written on the only Supreme Court case "every schoolboy" has heard of, it is practically a primer on constitutional law and the law of slavery, a brief history of the sectional issue in American politics, and a carefully reasoned argument about the causes of the Civil War. These are serious subjects, of course, and not ones that can merely be read about every night before going to sleep. They must be studied, and Professor Fehrenbacher's book must be studied. There is no problem with the writing style, which is lucid and lively, but the subject matter is difficult. Suffice it to say, that a chapter discussing the Lecompton constitution for Kansas, which many historians of the Civil War period regard as a nearly hopeless labyrinth of confusion, comes as a *relief* after the discussion of the issues raised in and by the Dred Scott decision.

Since *The Dred Scott Case* comprehends so many different subjects, its thesis cannot be neatly summarized in a sentence or two. In fact, it abounds in useful distinctions and insights on many different points. However, if one must say what the book argues in the main, it might be this: the Dred Scott decision was not an aberration, an inexplicably explosive decision from the hands of an otherwise restrained and erudite Chief

Justice, Roger Brooke Taney. The decision was consistent with his pro-Southern record and his willingness to see the United States Supreme Court intervene in difficult problems that plagued American politics. Moreover, the decision can be aptly characterized as a sloppy and tortured defense of Southern political interests from what militant Southerners perceived as a merciless Northern onslaught. As Fehrenbacher puts it, "the true purpose of Taney's Dred Scott opinion" was "to launch a sweeping counterattack on the antislavery movement and to reinforce the bastions of slavery at every rampart and parapet." The tone of Fehrenbacher's characterization of Taney's decision goes a good deal farther than the acknowledgment by Taney's judicious and fair-minded biographer, Carl Brent Swisher, that the Maryland-born Chief Justice wrote a decision that was defensive of the only section of the country he knew and the section he loved.

The two traits which most distinguish every part of Fehrenbacher's large book (595 pages of text and over 100 pages of footnotes) are balance and rigorous logic. Professor Fehrenbacher shares with his late colleague at Stanford, David M. Potter, a remarkable ability to show no sectional bias in any of his interpretations of American sectional conflict. He treats the causes and personalities of North and South with even-handed justice without at the same time excusing extremism and unreasonableness. It is this record of balance in appraising the sectional controversy up to the time of the Dred Scott decision which makes all the more devastating Fehrenbacher's relentless destruction of the court's opinion in that case.

The weapon of destruction is logic based on close and thoughtful reading of Taney's decision. Well before the point where he analyzes Taney's opinion, Fehrenbacher has repeatedly split arguments and distinctions into As and Bs and 1, 2, 3s — all to the benefit of the reader, always for the sake of clarification, and never with a false step. When he treats Taney's decision with the same precision, the results are remarkable.

To look closely at Taney's decision is in itself innovative despite the great fame of the Dred Scott case. The reasons for its being ignored in the past are many. Republican critics at the time, for example, were anxious to say that much of the decision was o*biter dictum,* that is, present in Taney's opinion but not crucial as a reason for deciding the case. Therefore, to many Republicans, there was no reason to examine much of the decision closely because much of the decision consisted of the irrelevant opinions of the Chief Justice on matters not at the heart of the case. Republican critics at the time, and a host of historians since, have tended also to focus on the question of the authoritativeness of the opinion as judged by how many of the Court's Justices concurred with or dissented from each of the various points made in the case. This has led to what Professor Fehrenbacher calls the "box-score method" of analyzing the Dred Scott decision, and he shows how absurd such interpretations are.

Fehrenbacher thinks it an error to seek ways of ignoring the decision. He looks at the decision itself, and what he sees in it is remarkable. Taney, for example, said that every "citizen" was a member of "the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives." This, Fehrenbacher points out, was a "gross inaccuracy": "A large majority of American citizens — namely, women and children — were not members of the sovereign people in the sense of holding power and conducting the government through their representatives." Negroes may not have been citizens but not for the reason Taney here described.

Likewise, Taney's assertion that, in the times of the Founding Fathers, Negroes "had no rights which the white man was bound to respect" was a "gross perversion of the facts." Taney's statement confused free Negroes with slaves, and, even then, "the statement was not absolutely true, for slaves had some rights at law before 1789." In fact, there were some respects in which "a black man's status was superior to that of a married white woman, and it was certainly far above that of a slave." The free black man "could marry, enter into contracts, purchase real estate, bequeathe property, and, most pertinently, seek redress in the courts." Republicans quoted Taney's harsh statement about white respect for Negro rights out of context as though it represented the Chief Justice's own views. Taney's defenders have pointed out that these were the opinions Taney said the Founding Fathers had; Taney was writing "historical narrative" here. Fehrenbacher shows that the statement was grossly prejudiced even as "historical narrative."

Taney's tortuous efforts to deny Negro citizenship were functions of his sectional fears and even of his Maryland background. He feared free Negroes, and he imputed this fear to the Founding Fathers, arguing that the slave states would never have ratified the Constitution if free Negroes had been included in the meaning of "citizens." Said Taney:

> For if they were . . . entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to persons of the negro race . . . the right to enter every other State whenever they pleased, . . . to go where they pleased at every hour of the day or night without molestation, . . . and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State.

Maryland was a state with a high population of free Negroes, and Taney's experience in such a state led him to forget that earlier in his opinion he had said that free Negroes were so few in number when the republic was founded that they "were not even in the minds of the framers of the Constitution." By his own admission, almost, Taney's mind and not the minds of the framers was dictating constitutional law here. In fact, as Fehrenbacher shows, Taney went to such lengths to exclude Negroes from the possibility of being naturalized citizens that his opinion made them *"the only people on the face of the earth who (saving a constitutional amendment) were forever ineligible for American citizenship."*

Fehrenbacher not only labels but proves Taney's history of the United States "phantasmal." He repeatedly demonstrates the Chief Justice's "chronic inability to get the facts straight." The important o*biter dictum* in the decision was not what Republicans usually criticized, but rather Taney's statement that a territorial government could not forbid slavery — "a question that had never arisen in the Dred Scott case." This, too, was a function of Southern fears. Fehrenbacher concludes that Benjamin Curtis and John McLean, the dissenting Northern Justices, "were in many respects the sound constitutional conservatives, following established precedent along a well-beaten path to their conclusions." By contrast, "Taney and his southern colleagues were the radical innovators — invalidating, for the first time in history, a major piece of federal legislation; denying to Congress a power that it had exercised for two-thirds of a century; sustaining the abrupt departure from precedent in *Scott v. Emerson* [an earlier stage of the case on its way to the Supreme Court]; and, in Taney's case, infusing the due-process clause with substantive meaning. And even though McLean did indulge his weakness for playing to the antislavery gallery, the southern justices were by far the more idiosyncratic and polemical."

It all sounds too pro-Northern to be true, but the balance with which Fehrenbacher treats the sectional crisis leading up to the decision and the balance of his appraisal of the decision's effects are the reader's assurance that Fehrenbacher's arguments have been carefully weighed. In the section of the book preceding the treatment of *Dred Scott v. Sandford,* Fehrenbacher traces the sectional controversy from the early period when the slave *interest* always triumphed over the antislavery *sentiment* in American politics, to the time when both became interests and tangled American politics in bitter and unresolvable disputes. There are far too many useful insights in this graceful, but thorough, survey to catalogue them all here, but one can at least see an example of Fehrenbacher's balanced approach.

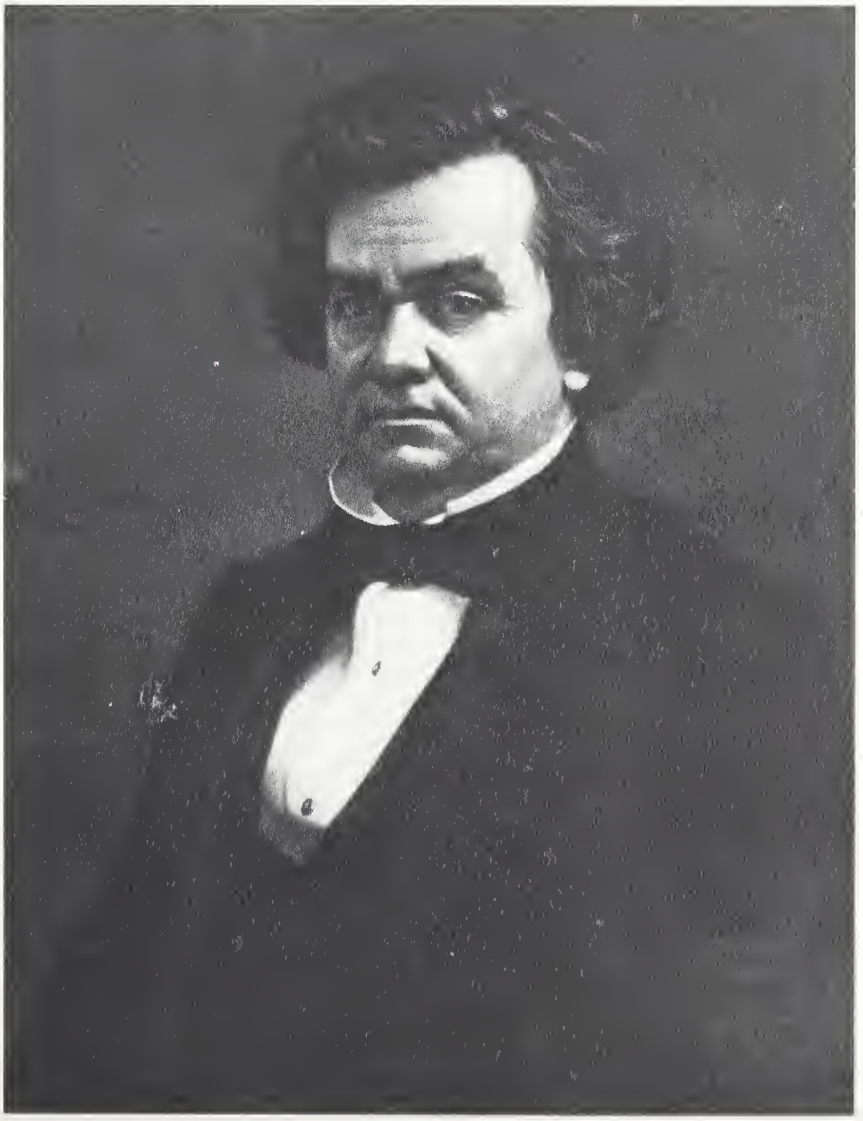
The fugitive-slave clause in the Constitution was a matter of little interest to the convention which passed it — late in the proceedings, by unanimous vote, and after little debate. Yet the myth soon arose that its passage had been essential to the acceptance of the Constitution by the slave states, a myth which was mouthed by the great Joseph Story in *Prigg v. Pennsylvania* (1842). He said the clause "constituted a fundamental article, without the adoption of which the Union could not have been formed." Thus the South gained unfair advantage here, Fehrenbacher says, and the federal govern-

ment became "a bulwark of slavery [,] . . . a development permitted but not required by the Constitution. It reflected not only the day-to-day advantage of interest over sentiment and the predominance of southern leadership in the federal government but also the waning of the liberal idealism of the Revolution." Here Professor Fehrenbacher sounds almost like the Republican Lincoln. He seems to voice an anti-Southern view of American history as a decline from the libertarian virtues of the Founding Fathers, a decline brought about the gradual erosion of the sentiment that slavery was wrong for the sake of the South's economic interest in slavery. Yet just five pages later, Fehrenbacher notes that Southerners were fair in their willingness to distinguish between "domicile" and "sojourn" in cases involving the presence of slaves in free states. If the slaveowner had taken up residence, the slaves were clearly free. If he was merely passing through on a sojourn, the slaves retained their original servile status. At first, Southern courts did not embrace the doctrine of "reattachment," whereby a slave returned to his home-state status when he returned to his home state, even if he had been in residence on free soil. Fehrenbacher says plainly, though, that the "northern states were the first to turn away from the tacit understanding" whereby courts in the two sections recognized the difference between domicile and sojourn. The quality of Southern justice did not change without provocation. This is balance.

Likewise, Fehrenbacher gives a balanced appraisal of the aftermath and consequences of the Dred Scott decision, and, as C. Vann Woodward has pointed out in another review of this book in the *New York Review of Books*, it is a modest appraisal. Fehrenbacher does not exaggerate the effects of the decision in his own views of the causes of the Civil War. If anything, he argues that the case was not as significant as historians have vaguely thought it was in causing the war.

One of Fehrenbacher's most interesting points is that the fight over the Lecompton constitution for Kansas and the personal image and reputation of Stephen A. Douglas were far more important than the Dred Scott decision in causing the war. A narrow decision which said nothing about Negro citizenship or the constitutionality of the Missouri Compromise line might not have averted sectional disaster. The effect of the Dred Scott decision was indirect. It "had no immediate legal effect of any importance except on the status of free Negroes. . . . it provoked no turbulent aftermath, presented no problem of enforcement, inspired no political upheaval." The Dred Scott decision "was in some ways like an enormous check that could not be cashed" by Southern leaders. The psychological frustration of intangible victory played a role but "only belatedly and indirectly." What was vital was "certain later developments."

The later developments in question revolved around the Lecompton controversy, "the last sectional crisis to end in compromise" and, therefore, "the close of the antebellum era in national politics." Fehrenbacher explains in a believable way the hopes and fears that were invested in that controversy. The Northern Democrats, having accepted as best they could the pro-Southern court decision, were in no condition to bear the weight of another Southern victory, and President Buchanan made a terrible error in asking them to do so. Stephen Douglas, who was much more the great compromiser of the 1850s than Henry Clay, seems out of character in spurning a practical political compromise on the Lecompton issue. Fehrenbacher carefully notes, however, Douglas's increasing inflexibility before that controversy, as



From the Louis A. Warren Lincoln Library and Museum

FIGURE 2. Stephen A. Douglas, determined but a little dissipated, became the focus of fierce Southern animosity in the year of the Dred Scott decision, but not because of the decision. His break with the Buchanan administration over the Lecompton constitution for Kansas made him "suddenly, . . . a party insurgent and a doctrinaire, taking an inflexible stand on principle and in the end rejecting a compromise that satisfied even many of his fellow insurgents." Southern newspapers declared "war to the knife," and some expressed "serene indifference" to the outcome of his race against Lincoln for the United States Senate in 1858. The Mobile *Register* saw Douglas as "the worst enemy of the South and the most mischievous man now in the nation." When Democrats tried to select a nominee for President in 1860, Fehrenbacher says, "a majority . . . from the Deep South preferred to break up their party rather than accept the nomination of Douglas."

he participated in "the fashion of constitutionalizing debate on slavery in the territories." He had already moved from recommending his solution for the territorial issue to saying that the Constitution *demanded* his solution to the issue.

When Douglas took his anti-Lecompton and anti-Southern stand, it "proved to be the crucial event that set the Democratic party on the path to disruption." The intensity of Southern attacks on Douglas was the intensity of hatred, not for an alien enemy, but for a *traitor*. As a Georgia editor put it, "Douglas was with us until the time of trial came; then he deceived and betrayed us." His defection was a symbol of the failure of the last hope for Northern fairness. Thereafter, the South was desperate and frantic. The coming of the war was at times a function of an almost *ad hominem* argument by Southerners against Douglas. Many historians have thought that the "Freeport Doctrine," announced by Douglas in his famous debates with Lincoln, made Douglas unacceptable to the South. Fehrenbacher is prepared to say, on the contrary, that the doctrine was made unacceptable by Douglas's advocacy of it.

Professor Fehrenbacher has long been associated with the view that the importance of the Freeport question has been greatly exaggerated. That was one of the revolutionary points of his brilliant book, *Prelude to Greatness: Lincoln in the 1850's*. In *The Dred Scott Case,* he is able to argue an even more convincing case for it by focusing more on Douglas than Lincoln. But what about Lincoln? How does he figure in this new work?

Fehrenbacher makes some interesting points. First, Lincoln's criticism of the Dred Scott case was not like the mainstream of Republican criticism which tried to dismiss the controversial parts of the decision as mere o*biter dicta*. Lincoln, instead, took the tack that a Supreme Court decision, though it must ultimately become authoritative, did not necessarily reach that authoritative status unless it were grounded in sound historical facts, were repeated by the Court in several decisions, represented the views of the bulk of the Justices, and met numerous other conditions that were functions of time. Likewise, Lincoln's first (and truest?) response to the decision was to denounce the historical absurdity of Taney's assertions about the state of opinion of the Founding Fathers on the Negro and to document a decline in recent times from the rather decently libertarian sentiments of the framers of the Constitution. His better-known response came a year later, in 1858, and in the midst of a dogged struggle with Douglas for the United States Senate. In negrophobic Illinois, Lincoln did not need to be seen, as Douglas tried to picture his opponent's opposition to the Dred Scott decision, as primarily concerned about Taney's denial of Negro citizenship. Illinois did not want Negro citizens, but Illinois feared Southern political power, and Lincoln thereafter characterized Taney's decision as part of a conspiracy, begun by Douglas in 1854 and continued by Presidents Pierce and Buchanan, to nationalize slavery. Lincoln concentrated less and less on the lamentable doctrines in the Dred Scott decision itself. Instead he warned of a *second* Dred Scott decision which would make not only Congress and territories but also *states* incapable of outlawing slavery.

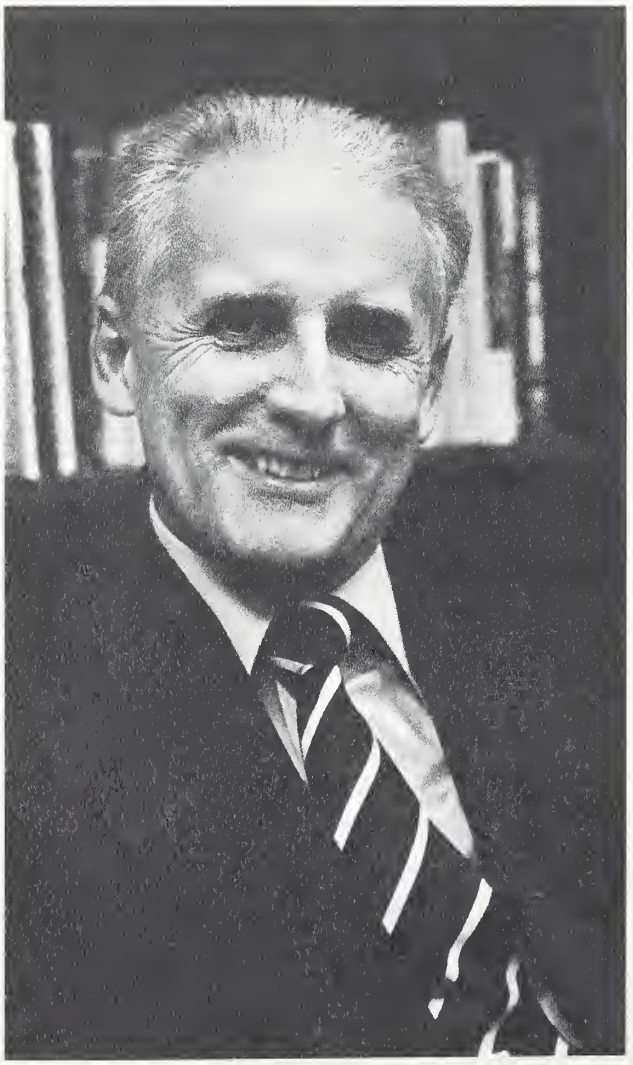
Professor Fehrenbacher further establishes his reputation as a fine writer in this book. It does seem that his prose has become slightly less formal than it used to be. He occasionally uses colloquial terms: "mixed bag" (page 342); "continuing on" (page 366); and "finish up" (page 536). Whether by calculation or by virtue of the spirit of the times, which have altered our language more in the direction of the common man, this has the effect, not of spoiling his excellent writing, but of making this book on a subject of forbidding complexity more palatable to the reader.

No book, of course, is beyond criticism. Because much of the book's import hinges on an accurate appraisal of Taney's personality and political thought, it is a shame the Chief Justice remains such a shadowy figure. The Dred Scott opinion was the opinion of a very old man; it might be interesting to know whether some of the glaring faults of the opinion followed a pattern of declining mental powers generally in his late opinions. It seems odd, given the particular shape Taney's opinion took, that there is no investigation of the doctrines of the age to which it seems an answer. That is, Salmon P. Chase and others had been forging an antislavery interpretation of the Constitution, and the Declaration of Independence loomed large in antislavery arguments. Was Taney's preoccupation with the Founding Fathers strictly a function of a judicial need to know the opinions of the framers of the document from which American law derived? Did not Republican ideology shape his defense as much as the demands of Southern interests and of constitutional law?

There are doubtless other and better questions yet to be answered, but Fehrenbacher's book answers many more questions that it begs. *The Dred Scott Case* is a great book, far too great to be comprehended in any single review (or reading). Every serious student of the period must read it, and, because of Professor Fehrenbacher's careful research and attention to clarity in writing, the reading will be an unalloyed pleasure.

AN IMPORTANT ANNOUNCEMENT

Professor Fehrenbacher has generously consented to present the second annual R. Gerald McMurtry Lecture. The 1979 Lecture will occur on the night of May 10, at the Louis A. Warren Lincoln Library and Museum. The Lecture is free to the public and is followed by an informal reception for the lecturer. For further information, please write Mark Neely, Louis A. Warren Lincoln Library and Museum, 1300 South Clinton Street, Fort Wayne, Indiana 46801.



From the Louis A. Warren Lincoln Library and Museum

FIGURE 3. Professor Don E. Fehrenbacher.

Lincoln Lore

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Number 1703

LINCOLN AND SLAVERY: AN OVERVIEW

Abraham Lincoln was a native of a slave state, Kentucky. In 1811 Hardin County, where Lincoln was born two years before, contained 1,007 slaves and 1,627 white males above the age of sixteen. His father's brother Mordecai owned a slave. His father's Uncle Isaac may have owned over forty slaves. The Richard Berry family, with whom Lincoln's mother Nancy Hanks lived before her marriage to Thomas Lincoln, owned slaves. Thomas and Nancy Lincoln, however, were members of a Baptist congregation which had separated from another church because of opposition to slavery. This helps explain Lincoln's statement in 1864 that he was "naturally anti-slavery" and could "not remember when I did not so think, and feel." In 1860 he claimed that his father left Kentucky for Indiana's free soil "partly on account of slavery."

Nothing in Lincoln's political career is inconsistent with his claim to have been "naturally anti-slavery." In 1836, when resolutions came before the Illinois House condemning abolitionism, declaring that the Constitution sanctified the right of property in slaves, and denying the right of Congress to abolish slavery in the District of Columbia, Lincoln was one of six to vote against them (seventy-seven voted in favor). Near the end of the term, March 3, 1837, Lincoln and fellow Whig Dan Stone wrote a protest against the resolutions which stated that "the institution of slavery is founded on both injustice and bad policy." It too denounced abolitionism as more likely to exacerbate than abate the evils of slavery and asserted the right of Congress to abolish slavery in the District of Columbia (though the right should not be exercised without the consent of the District's citizens). Congress, of course, had no right to interfere with slavery in the states. In 1860 Lincoln could honestly point to the consistency of his antislavery convictions over the last twenty-three years. That early protest "briefly defined his position on the slavery question; and so far as it goes, it was then the same that it is now."

In his early political career in the 1830s and 1840s, Lincoln had faith in the benign operation of American political institutions. Though "opposed to slavery" throughout the period, he "rested in the hope and belief that it was in course of ultimate extinction." For that reason, it was only "a minor question" to him. For the sake of keeping the nation together, Lincoln thought it "a paramount duty" to leave slavery in the states alone. He never spelled out the basis of his faith entirely, but he had confidence that the country was ever seeking to approximate the ideals of the Declaration of Independence. All men would be free when slavery, restricted to the areas where it already existed, exhausted the soil, became unprofitable, and was abolished by the slave-holding states themselves or perhaps by numerous individual emancipations. Reaching this goal, perhaps by the end of the century, required of dutiful politicians only "that we should never knowingly lend ourselves directly or indirectly, to prevent . . . slavery from dying a natural death — to find new places for it to live in, when it can no longer exist in the old." This statement, made in 1845, expressed Lincoln's lack of concern over the annexation of Texas, where slavery already existed. As a Congressman during the Mexican War, Lincoln supported the Wilmot Proviso because it would prevent the growth of slavery in parts of the Mexican cession where the institution did not already exist. He still considered slavery a "distracting" question, one that might destroy America's experiment in popular government if politicians were to "enlarge and agrivate" it either by seeking to expand slavery or to attack it in the states.

From the Louis A. Warren Lincoln Library and Museum

FIGURE 1. Like many other prints of Lincoln published soon after his death, this one celebrated the Emancipation Proclamation as his greatest act.

Lincoln became increasingly worried around 1850 when he read John C. Calhoun's denunciations of the Declaration of Independence. When he read a similar denunciation by a Virginia clergyman, he grew more upset. Such things undermined his confidence because they showed that some Americans did not wish to approach the ideals of the Declaration of Independence; for some, they were no longer ideals at all. But these were the statements of a society directly interested in the preservation of the institution, and Lincoln did not become enough alarmed to aggravate the slave question. He began even to lose interest in politics.

The passage of Stephen A. Douglas's Kansas-Nebraska Act

From the Louis A. Warren Lincoln Library and Museum

FIGURE 2. Charles Eberstadt noted fifty-two printed editions of the Emancipation Proclamation issued between 1862 and 1865. He called this one a "highly spirited Western edition embellished with four large slave scenes lithographed at the left and four freedom scenes at the right."

in 1854 changed all this. Lincoln was startled when territory previously closed to slavery was opened to the possibility o its introduction by local vote. He was especially alarmed a the fact that this change was led by a Northerner with n direct interest in slavery to protect.

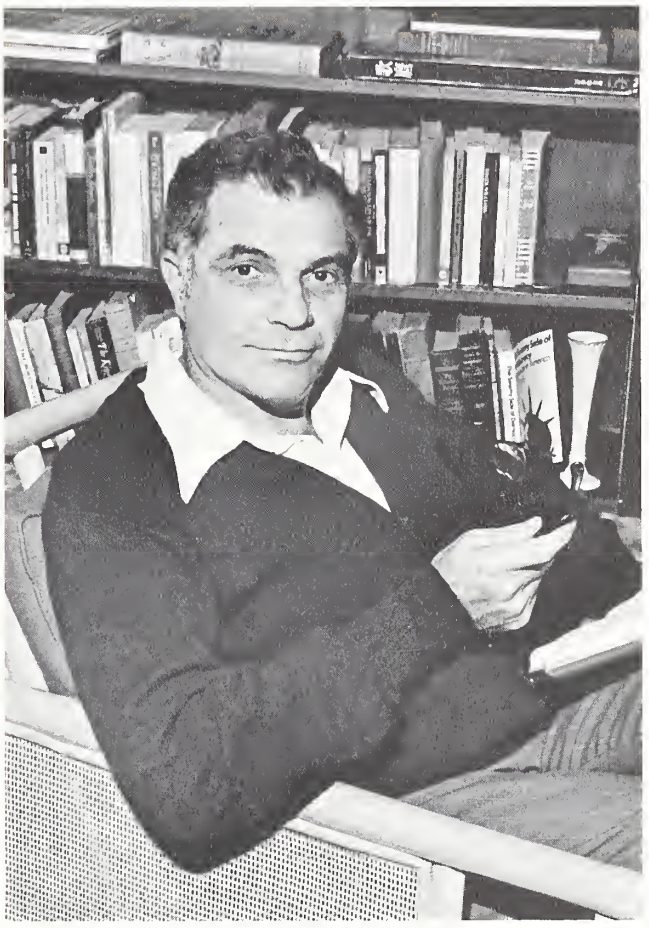
In 1841 Lincoln had seen a group of slaves on a steamboa being sold South from Kentucky to a harsher (so he assumed slavery. Immediately after the trip, he noted the irony of thei seeming contentment with their lot. They had appeared to b the happiest people on board. After the Kansas-Nebraska Act he wrote about the same episode, still vivid to him, as "a continual torment to me." Slavery, he said, "has, an continually exercises, the power of making me miserable."

Lincoln repeatedly stated that slaveholders were no wors than Northerners would be in the same situation. Havin inherited an undesirable but socially explosive politica institution, Southerners made the best of a bad situation. Lik all Americans before the Revolution, they had denounce Great Britain's forcing slavery on the colonies with the slav trade, and, even in the 1850s, they admitted the humanity o the Negro by despising those Southerners who dealt with th Negro as property, pure and simple — slave traders. But h feared that the ability of Northerners to see that slavery wa morally wrong was in decline. This, almost as surely a disunion, could mean the end of the American experiment i freedom, for any argument for slavery which ignored th moral wrong of the institution could be used to enslave an man, white or black. If lighter men were to enslave darke men, then "you are to be slave to the first man you meet, with a fairer skin than your own." If superior intellect determine masters, then "you are to be slave to the first man you meet with an intellect superior to your own." Once the mora distinction between slavery and freedom were forgotten nothing could stop its spread. It was "founded in th selfishness of man's nature," and that selfishness coul overcome any barriers of climate or geography.

By 1856 Lincoln was convinced that the "sentiment in fav of white slavery . . . prevailed in all the slave state papers except those of Kentucky, Tennessee and Missouri an Maryland." The people of the South had "an immediat palpable and immensely great pecuniary interest" in th question; "while, with the people of the North, it is merely a abstract question of moral right." Unfortunately, the latte formed a looser bond than economic self-interest in two billio dollars worth of slaves. And the Northern ability to resist wa steadily undermined by the moral indifference to slaver epitomized by Douglas's willingness to see slavery voted up o down in the territories. The Dred Scott decision in 185 convinced Lincoln that the Kansas-Nebraska Act had bee the beginning of a conspiracy to make slavery perpetual national, and universal. His House-Divided Speech of 185 and his famous debates with Douglas stressed the specter of a conspiracy to nationalize slavery.

Lincoln's claims in behalf of the slaves were modest and di not make much of the Negro's abilities outside of slavery. Th Negro "is not my equal . . . in color, perhaps not in moral o intellectual endowment," Lincoln said, but "in the right to pu into his mouth the bread that his own hands have earned, h is the equal of every other man, white or black." Lincol objected to slavery primarily because it violated the doctrin of the equality of all men announced in the Declaration o Independence. "As I would not be a *slave*, so I would not be a *master*," Lincoln said. "This expresses my idea of democracy Whatever differs from this, to the extent of the difference, is n democracy."

Lincoln had always worked on the assumption that the Union was more important than abolishing slavery. As long as the country was approaching the ideal of freedom for all men, even if it took a hundred years, it made no sense to destroy the freest country in the world. When it became apparent to Lincoln that the country might not be approaching that ideal, it somewhat confused his thinking. In 1854 he admitted that as "Much as I hate slavery, I would consent to the extension of it rather than see the Union dissolved, just as I would consent to any GREAT evil, to avoid a GREATER one." As his fears of a conspiracy to nationalize



Photograph by James Aronovsky
Courtesy of Harold M. Hyman

Professor Harold M. Hyman.

AN IMPORTANT ANNOUNCEMENT

Harold M. Hyman, William P. Hobby Professor of History at Rice University, will present the third annual R. Gerald McMurtry Lecture on Thursday, May 8, 1980, at 8:00 p.m. at the Louis A. Warren Lincoln Library and Museum. His subject will be "Lincoln's Reconstructions: Neither Failure of Vision Nor Vision of Failure." Professor Hyman will discuss issues posed by the recent *Bakke* decision and by *Brown vs. Board of Education*, examining their roots in the ideas of equality and the national institutions Lincoln created to encourage equality.

Professor Hyman is a leader of the current movement toward a new understanding of the importance of American constitutional history. He is the author of more than half a dozen books. Lincoln students know him best for *Era of the Oath: Northern Loyalty During the Civil War and Reconstruction; Stanton: The Life and Times of Lincoln's Secretary of War;* and *A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution.*

For further information call (219) 424-5421 ext. 7031.

From the Louis A. Warren Lincoln Library and Museum

FIGURE 2. Charles Eberstadt noted fifty-two printed editions of the Emancipation Proclamation issued between 1862 and 1865. He called this one a "highly spirited Western edition embellished with four large slave scenes lithographed at the left and four freedom scenes at the right."

in 1854 changed all this. Lincoln was startled when territory previously closed to slavery was opened to the possibility of its introduction by local vote. He was especially alarmed at the fact that this change was led by a Northerner with no direct interest in slavery to protect.

In 1841 Lincoln had seen a group of slaves on a steamboat being sold South from Kentucky to a harsher (so he assumed) slavery. Immediately after the trip, he noted the irony of their seeming contentment with their lot. They had appeared to be the happiest people on board. After the Kansas-Nebraska Act, he wrote about the same episode, still vivid to him, as "a continual torment to me." Slavery, he said, "has, and continually exercises, the power of making me miserable."

Lincoln repeatedly stated that slaveholders were no worse than Northerners would be in the same situation. Having inherited an undesirable but socially explosive political institution, Southerners made the best of a bad situation. Like all Americans before the Revolution, they had denounced Great Britain's forcing slavery on the colonies with the slave trade, and, even in the 1850s, they admitted the humanity of the Negro by despising those Southerners who dealt with the Negro as property, pure and simple — slave traders. But he feared that the ability of Northerners to see that slavery was morally wrong was in decline. This, almost as surely as disunion, could mean the end of the American experiment in freedom, for any argument for slavery which ignored the moral wrong of the institution could be used to enslave any man, white or black. If lighter men were to enslave darker men, then "you are to be slave to the first man you meet, with a fairer skin than your own." If superior intellect determined masters, then "you are to be slave to the first man you meet, with an intellect superior to your own." Once the moral distinction between slavery and freedom were forgotten, nothing could stop its spread. It was "founded in the selfishness of man's nature," and that selfishness could overcome any barriers of climate or geography.

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> There is nothing that can ever bring me willingly to consent to the destruction of this Union, under which . . . the whole country has acquired its greatness, unless it were to be that thing for which the Union itself was made. I understand a ship to be made for the carrying and preservation of the cargo, and so long as the ship can be saved, with the cargo, it should never be abandoned. This Union should likewise never be abandoned unless it fails and the probability of its preservation shall cease to exist without throwing the passengers and cargo overboard. So long, then, as it is possible that the prosperity and the liberties of the people can be preserved in the Union, it shall be my purpose at all times to preserve it.

The Civil War saw Lincoln move quickly to save the Union by stretching and, occasionally, violating the Constitution. Since he had always said that constitutional scruple kept him from bothering slavery in the states, it is clear that early in the war he was willing to go much farther to save the Union than he was willing to go to abolish slavery. Yet he interpreted it as his constitutional duty to save the Union, even if to do so he had to violate some small part of that very Constitution. There certainly was no constitutional duty to do anything about slavery. For over a year, he did not.

On August 22, 1862, Lincoln responded to criticism from Horace Greeley by stating his slavery policy:

> If there be those who would not save the Union, unless they could at the same time *save* slavery, I do not agree with them. If there be those who would not save the Union unless they could at the same time *destroy* slavery, I do not agree with them. My paramount object in this struggle *is* to save the Union, and is *not* either to save or to destroy slavery. If I could save the Union without freeing *any* slave I would do it, and if I could save it by freeing *all* the slaves I would do it; and if I could save it by freeing some and leaving others alone I would also do that. What I do about slavery, and the colored race, I do because I believe it helps to save the Union; and what I forbear, I forbear because I do *not* believe it would help to save the Union. I shall do *less* whenever I shall believe what I am doing hurts the cause, and I shall do *more* whenever I shall believe doing more will help the cause. I shall try to correct errors when shown to be errors; and I shall adopt new views so fast as they shall appear to be true views.
>
> I have here stated my purpose according to my view of *official* duty; and I intend no modification of my oft-expressed *personal* wish that all men every where could be free.

The Emancipation Proclamation, announced just one month later, was avowedly a military act, and Lincoln boasted of his consistency almost two years later by saying, "I have done no official act in mere deference to my abstract judgment and feeling on slavery."

Nevertheless, he had changed his mind in some regards. Precisely one year before he issued the preliminary Emancipation Proclamation, Lincoln had criticized General John C. Frémont's emancipation proclamation for Missouri by saying that "as to . . . the liberation of slaves" it was "*purely political*, and not within the range of *military* law, or necessity."

> If a commanding General finds a necessity to seize the farm of a private owner, for a pasture, an encampment, or a fortification, he has the right to do so, and to so hold it, as long as the necessity lasts; and this is within military law, because within military necessity. But to say the farm shall no longer belong to the owner, or his heirs forever; and this as well when the farm is not needed for military purposes as when it is, is purely political, without the savor of military law about it. And the same is true of slaves. If the General needs them, he can seize them, and use them; but when the need is past, it is not for him to fix their permanent future

condition. That must be settled according to laws made by law-makers, and not by military proclamations. The proclamation in the point in question, is simply "dictatorship." It assumes that the general may do *anything* he pleases— confiscate the lands and free the slaves of *loyal* people, as well as of disloyal ones. And going the whole figure I have no doubt would be more popular with some thoughtless people, than that which has been done! But I cannot assume this reckless position; nor allow others to assume it on my responsibility. You speak of it as being the only means of *saving* the government. On the contrary it is itself the surrender of the government. Can it be pretended that it is any longer the government of the U.S. — any government of Constitution and laws, — wherein a General, or a President, may make permanent rules of property by proclamation?

I do not say Congress might not with propriety pass a law, on the point, just such as General Fremont proclaimed. I do not say I might not, as a member of Congress, vote for it. What I object to, is, that I as President, shall expressly or impliedly seize and exercise the permanent legislative functions of the government.

Critics called this inconsistency; Lincoln's admireres have called it "growth." Whatever the case, just as Lincoln's love of Union caused him to handle the Constitution somewhat roughly, so his hatred of slavery led him, more slowly, to treat the Constitution in a manner inconceivable to him in 1861. Emancipation, if somewhat more slowly, was allowed about the same degree of constitutional latitude the Union earned in Lincoln's policies.

The destruction of slavery never became the avowed object of the war, but by insisting on its importance, militarily, to saving the Union, Lincoln made it constitutionally beyond criticism and, in all that really mattered, an aim of the war. In all practical applications, it was a condition of peace — and was so announced in the Proclamation of Amnesty and Reconstruction of December 8, 1863, and repeatedly defended in administration statements thereafter. He reinforced this fusion of aims by insisting that the Confederacy was an attempt to establish "a new Nation, . . . with the primary, and fundamental object to maintain, enlarge, and perpetuate human slavery," thus making the enemy and slavery one and the same.

Only once did Lincoln apparently change his mind. In the desperately gloomy August of 1864, when defeat for the administration seemed certain, Lincoln bowed to pressure from Henry J. Raymond long enough to draft a letter empowering Raymond to propose peace with Jefferson Davis on the condition of reunion alone, all other questions (including slavery, of course) to be settled by a convention afterwards. Lincoln never finished the letter, and the offer was never made. Moreover, as things looked in August, Lincoln was surrendering only what he could not keep anyway. He was so convinced that the Democratic platform would mean the loss of the Union, that he vowed in secret to work to save the Union before the next President came into office in March. He could hope for some cooperation from Democrats in this, as they professed to be as much in favor of Union as the Republicans. Without the Union, slavery could not be abolished anyhow, and the Democrats were committed to restoring slavery.

Lincoln had made abolition a party goal in 1864 by making support for the Thirteenth Amendment a part of the Republican platform. The work he performed for that measure after his election proved that his antislavery views had not abated. Near the end of his life, he repeated in a public speech one of his favorite arguments against slavery: "Whenever [I] hear any one, arguing for slavery I feel a strong impulse to see it tried on him personally."

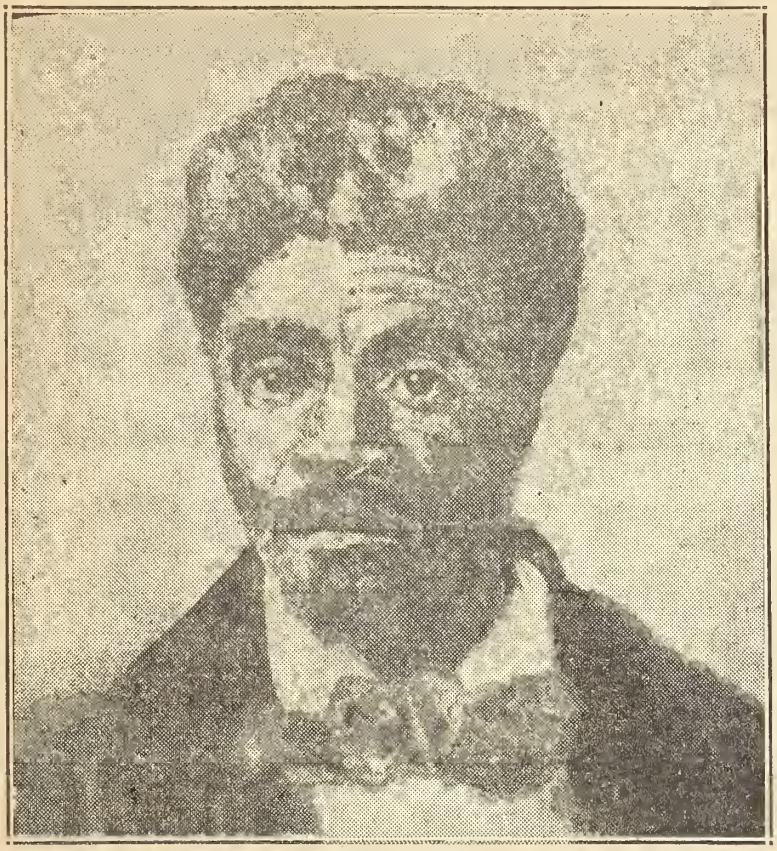
From the Louis A. Warren Lincoln Library and Museum

FIGURE 3. This Indianapolis edition of the Emancipation Proclamation, published in 1886, obviously copied the edition in Figure 2. Note, however, that the harsher scenes of slavery are removed — a sign of the post-Reconstruction political ethos.

THE SUPREME COURT

By Henry W. Harris

The Case That Split the Union



DRED SCOTT

THOUGH he was just a slave about the house, Dred Scott could say with truth that he, personally, had had a lot to do with starting the Civil War.

His late master had taken him on a trip from the slave State of Missouri into free Illinois, then into the Northwest territory, from which Congress had barred slavery. Now, the master's widow had married Dr C. C. Chaffee, an Abolitionist Congressman from Massachusetts; as a test case they caused the colored man to sue for his freedom in the Federal Court in Missouri.

The struggle in the 1850's centered on the question whether the Western territories should enter the Union free or slave. The North shuddered at the idea of extending human bondage. The South felt it had to have a predominance of slave Congressmen and Senators to protect its "peculiar institution"; it had to rule or be ruined. As a compromise, Stephen A. Douglas of Illinois had put through a law by which the inhabitants of each territory would decide the slavery question for themselves.

When the Dred Scott case came before the Supreme Court, Chief Justice Roger B. Taney of Maryland and the majority wished to dodge the main issue and turn down the plea on the ground that Scott, as a slave, could not sue in slave Missouri. But Justice Benjamin R. Curtis of Massachusetts insisted on opening up the whole question whether Congress had the right to prohibit slavery in the territories. President-Elect Buchanan received word from one of the justices that the court intended to rule in favor of slavery.

In his inaugural Mr Buchanan emphasized the importance of the coming decision, adding that he would "cheerfully submit" to it, whatever it might be. Two days later, on March 6, 1857, the Supreme Court handed down a decision not only denying Scott his freedom but also declaring that Congress had no right to outlaw slavery in any territory.

Scott's owner freed him, anyhow, but this was scarcely noticed in the storm that followed. Justice Curtis resigned from the Supreme Court. The New York Tribune noted that a majority of the court were slaveholders. The New York Independent declared the decision "the moral assassination of a race," "a willful perversion," and called America's highest tribunal "the court of a political party." Feeling ran high through the North.

The next year, in a Senatorial campaign in Illinois, Abraham Lincoln asked a question of his opponent, Stephen A. Douglas. Congress created the territories, he said; Douglas claimed that the territories themselves could outlaw slavery. How could the territories, asked Lincoln, do something that their creator, Congress, could not constitutionally do?

Douglas answered that the territories could make slavery impossible by refusing to enact laws for its protection. The reply won him the Senatorship from Illinois, but so angered the South that it refused to support him for the Presidency in 1860. The Democratic party split, had two presidential candidates, one Northern, one Southern. Lincoln was able to win with only a plurality of the votes. As a result of his election, made possible by the Dred Scott decision, there followed Secession and the Civil War.

(Tomorrow: "Grant Packed the Court")